REMARKS

Rich: On the Several Martin II 1599

SANGUINARY

AND

Penal Laws

MADE IN

PARLIAMENT

AGAINST

Roman Catholics.

With ſome REASONS humbly offer'd in order to obtain a REPEAL of thoſe Laws, for the better Advancement of His Majeſty's Service, and the Eaſe of many of His moſt Loyal Subjects.

Publiſhed with Allowance.

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REMARKS
ON THE
Sanguinary, and Penal LAWS
Made in PARLIAMENT againſt
Roman Catholics.

IN *England*, where, ever ſince the Reformation, nothing has been more pretended to, than the Purity of Religion, (tho' as little appearing in the Reformation and Purity of Life, as in other parts of *Europe*) two things have been of late years much aſſerted, *viz. The Liberty and Freedom of Conſcience in matters of Faith*; and *Magna Charta*, which has eſtabliſh'd the Liberty and Freedom of our Perſons and Eſtates. The Violation of Conſcience has been the great ſcandal and Common-place of all our Invectives againſt the Church of *Rome*: *Fox's Martyrology* is full of diſmal ſtories of Perſecutions againſt *Proteſtants* on the account of Conſcience; and 'tis the very ſamething that repreſents the proceedings of the *French King*, in relation to his *Proteſtant Subjects*, ſo odious at this day; that brings ſo many poor People out of *France* into *England* and *Holland*, and opens ſo many Purſes in Charity to maintain them. As to *Magna Charta*, it hath been now for above 460 years the Darling Law of our

Engliſh Nation, the Sacred Touch-ſtone of Liberty, and the Great *Diana* of the Commons. And, as Sir *Edward Coke* obſerves, it has been confirm'd above thirty times. It is the Fountain of all the Fundamental Laws of this Realm; and not only all Judgments given againſt any Chapter of *Magna Charta* are void, by the Statute 25 *E.* 1. ch. 2, but alſo by the Stat. 42 *E.* 3. ch. 1. it is Enacted, *That if any Statute be made contrary to* Magna Charta, *it ſhall be holden for none.*

Co. 1. *Inſt.* *p.* 81.

I ſhall therefore here obſerve, 1. How great an Impoſition and Conſtraint the *Penal Laws* are upon the Conſcience; and 2. How repugnant they are to *Magna Charta.*

The Penal Laws againſt *Roman Catholics* are theſe:

1 *Eliz.* ch. 1. 5 *Eliz.* ch. 1. 13 *Eliz.* ch. 2. 23 *Eliz.* ch. 1. 27 *Eliz.* ch. 2. 29 *Eliz.* ch. 6. 35 *Eliz.* ch. 2. 1 *Jac.* ch. 4. 3 *Jac.* ch. 4. 3 *Jac.* ch. 5. 7 *Jac.* ch. 6. 3 *Car.* 1. ch. 2. 25 *Car.* 2. ch. 2. and 30 *Car.* 2.

Firſt then, as to the Stat. 1 Eliz. *ch.* 1.

By this Statute, and by the Oath of Supremacy hereby enjoyn'd, every *Papiſt* in Office is ſubjected to ſevere Penalties, unleſs he renounces and abjures all Foreign Juriſdictions, Powers, Superiorities, and *Authorities* in Eccleſiaſtical matters. By which words he does not only deny the Primacy of Rule in matters of Religion, which his Forefathers taught him to be in the Pope or Biſhop of *Rome*; but alſo he does caſt off all *Authority* of any General Council held beyond Seas, and all its Decrees or Deciſions

Decisions in matters of Faith and Christian Doctrin, tho' such General Council be held by the common consent of all *Christendom*; yet if such Council be held beyond Seas, it is repugnant to this Statute, and the words of this Oath, and of no force here, tho' his Conscience tells him otherwise. Neither, by this Statute can any *Roman Catholic* hold, affirm, or defend in discourse, any such Foreign *Authority* in matters of Religion, without forfeiting all his Goods and Chattels for the first Offence, incurring a Præmunire for the second, and High-Treason for the third. And note, that the Foreign Jurisdiction and Authority which by this Statute he is forced to abjure, against his Conscience, relates only to Ecclesiastical and Spiritual matters. For, as to any Encroachment in Temporal Affairs, and Matters of Secular Government, by the Pope or Court of *Rome*, there have been several Staute-Laws made to restrain that (if at any time attempted) by divers *Catholic Kings* of this Kingdom, who lived and died in the Religion of the Church of *Rome*: And there is no *Roman Catholic* in *England*, who will make the least scruple to oppose the Pope's Authority in such matters.

25 *E.* 3.
27 *E.* 3. 1.
38 *E.* 3.
16 *R.* 2. 5.
2 *H.* 4. 3.
3 *H.* 5.
St. 2. *c.* 4. *&c.*

Stat. 5 *Eliz.* ch. 1.

This Statute makes the said Oath and Abjuration more generally to be taken, and the Refusers subject to greater Penalties than by the former. It enjoyns it also to all Members of the House of Commons in Parliament: So that hereby a Gentleman bred up from his Infancy in the Religion of the Church of *Rome*, cannot possibly with a safe Conscience vote among the Representatives of the Nation, nor serve his Countrey in Parliament, tho' formerly

formerly the Members of the ſaid Houſe of Commons were of no other Religion, from the firſt Original of that Houſe down to the laſt Century.

Stat. 13 *Eliz.* ch. 2.

This is a bloody Statute; for by this it is made High-Treaſon for any perſon or perſons within this Realm, (in which words are included not only Proteſtants, but profeſt Atheiſts, Jews, Socinians, or any other ſort of people bred up in Hereſie and Error) to be abſolved or reconciled to the Church of *Rome*, tho' in their Conſcience they may be never ſo fully convinced of the Truth of that Religion; yet they muſt not become Members of that Church, under the Penalty of being Hang'd and Quarter'd, and of forfeiting all their Lands and Eſtate Real and Perſonal from their Innocent Children. Alſo to bring into this Realm any *Agnus Dei*, Croſs, Picture, or Beads, from the Biſhop or See of *Rome*, or for any perſon to receive or wear the ſame; tho' theſe are not by the Statute it ſelf repreſented as any criminal matter, but only called *Vain and Superſtitious things*; yet this is made a *Præmunire*. *Paragraph* 7.

Stat. 23 *Eliz.* ch. 1.

This Statute is to the ſame purpoſe, making it High-Treaſon to return, or be reconciled to the Religion of the Church of *Rome*. Alſo for any perſon to hear Maſs, (tho' he be bred up in the *Catholic Religion*, and never knew any other, and in his Conſcience is fully convinced that this is the moſt Sacred part of God's Worſhip;) yet for ſo doing he is by this Statute (contrary to the conſtant practice

of

of former Times) to forfeit 100 Marks, and ſuffer a years Impriſonment.

Stat. 27 *Eliz.* ch. 2.

By this Statute all Prieſts of the Church of *Rome*, coming into, or remaining in this Realm, their Aiders and Abbettors, are made guilty of High-Treaſon. And (*Parag.* 13.) for any one to know of a Jeſuit or Prieſt remaining within this Realm, tho' this be purely for the Exerciſe of his Religion privately, without the leaſt Offence or Scandal; yet if ſuch perſon, tho' uſing ſuch Prieſt in matters of God's Worſhip, and that Religion which his Conſcience tells him is not only *Good*, but *Neceſſary*, does not diſcover him within twelve days, in order to have him Hang'd and Quarter'd, this is grievouſly puniſhable, by Fine, and Impriſonment during pleaſure.

And, by *Parag.* 6. he incurs a *Præmunire* who ſends or returns any Relief or Charity to a Prieſt or other perſon remaining in a College beyond Seas; tho' ſuch Prieſt is not ſuffered by this Statute to remain here; tho' ſuch Prieſt or other perſon cannot exerciſe his Religion in *England* without Perſecution: tho' ſuch Prieſt or other perſon be our neareſt Relation, Father, Brother, or Son; and tho' the Precepts of Chriſtianity oblige us to Charity, and the Relief of the Deſtitute, without diſtinction of Religions.

Stat. 35 *Eliz.* ch. 2.

A *Roman Catholic*, convicted of not coming to Church to hear Common-Prayer and Divine Service there, muſt by this Statute, within forty days after.

after ſuch Conviction, repair to his own home, not remove above five miles from thence, and within three months conform in coming to Church, and make a formal Submiſſion; which if he refuſes to do, he ſhall abjure the Realm for ever, or ſuffer as a Felon without benefit of Clergy: In which Submiſſion he is to confeſs and acknowledge, *That he hath grievouſly offended God by abſenting himſelf from Church, and from hearing Divine Service*; when his Conſcience poſſibly at the ſame time tells him that he ſhould offend God in going to a Church or Congregation of people, who in his Judgment are Schiſmatical, and have ſeparated themſelves from the Catholic Church; or at leaſt, that he hath *Not* offended God in abſenting himſelf, and not going thither, ſo long as he has gone to, and ſerved God in, his own Church, which his Conſcience tells him is *Catholic* and *Orthodox*, tho' ſuppreſs'd by force.

Stat. 1 *Jac.* ch. 4.

This Statute confirms thoſe formerly made in the Reign of Queen *Elizabeth*; and beſides the Forfeitures and Penalties of thoſe Laws inflicted for not coming to Church, it Enacts, (*Parag.* 6.) *That every Child or other perſon ſent beyond Seas into any College to be inſtructed in the Romiſh Religion, ſhall be incapable to inherit to any Eſtate, or to enjoy any Grant or Legacy.*

Stat. 3 *Jac.* ch. 4.

By this Statute (and by that of 29 *Eliz.* ch. 6.) *Roman Catholics* are bound to pay into the *Exchequer* yearly 20*l.* a Month, (that is 240*l. per Annum*) for

for not coming to Church, unleſs the King pleaſe rather to take two third parts of their Lands. *Par.* 8. 11.

This Act enjoyns the *Oath of Allegiance*, commonly ſo called; which, as it is a promiſſary Oath, of Faith, Allegiance, and Loyalty to the King, no *Roman Catholic* of His Majeſty's Dominions can, or will, ſcruple to take, were it not that ſome nice words were put in on purpoſe to enſnare their Conſciences. And therefore the old ſhort Oath of Allegiance taken by our Anceſtors, and ſtill uſed in *Leets*, and which in effect contains as much as this long Oath, never was, or is at this day, in the leaſt ſcrupled to be taken by any *Roman Catholic*. Which ſhort Oath being the Sum and Abſtract of compleat Loyalty, is in theſe words:

YOU ſhall ſwear, That from this day forward you ſhall be True and Faithful to our Sovereign Lord King JAMES and his Heirs, and Truth and Faith ſhall bear of Life and Member, and Terrene Honor; and you ſhall neither know nor hear of any Ill or Damage intended unto Him, that you ſhall not defend; So help you Almighty God.

Stat. 3 *Jac.* ch. 5.

By this Law all *Roman Catholics* convicted of not coming to Church (commonly called *Recusants convict*) are secluded (for their Conscience-sake, or their Opinion in Religion) from practising the Common and Civil Laws, or Physic; from enjoying any Office in any Court of Justice, or in the Army or Navy; and, in short, from any public Office; and that they shall be reputed as Excommunicated persons. (*Parag.* 8, 9, 11.)

Par. 14. A *Roman Catholic* who causes not his Child to be baptized by a Protestant Minister within a Month after its Birth, forfeits 100 *l.* Is not this to disallow the Baptism of the Church of *Rome*, in which all our Christian Ancestors were baptized, and with which St. *Augustin* the Monk above 1100 years ago converted the English Nation to Jesus Christ?

Stat. 7 *Jac.* ch. 6.

By this Statute a Feme-Covert convicted of not coming to Church, and still persisting so to do, shall be committed to Prison, there to remain till she conforms and receives the Sacrament, unless her Husband pay 10 *l.* a month, or the third part of his Lands during her Recusancy. Here a Protestant Husband is secluded from the Society of his Wife, or else compelled to a grievous Penalty for *her* Conscience or Judgment in Religion.

Stat. 3 *Car.* 1. ch. 2.

By this Law that of the 1 *Jac.* ch. 4. is reinforced; and

and it is made ſtill more Penal for any to go, or ſend another, beyond Seas, to any Roman Catholic Family, School, or Society, to be inſtructed in Religion, tho' his Conſcience be never ſo fully convinced of its neceſſity to his Salvation.

Thus far we ſee how well theſe Statutes agree with that *Chriſtian Liberty* which all thoſe of the Reformed Religion pretend to. Let us now ſee whether they be leſs repugnant to *Magna Charta*.

By the firſt Chapter of *Magna Charta* it is Enacted, *That the Church of* England *ſhall be free, and ſhall have all her Rights and Liberties inviolable*; (Eccleſia Anglicana libera ſit, & habeat omnia Jura ſua integra & Libertates ſuas illæſas.) The Reader muſt note here, (for it cannot be denied) *That the Church of England*, Eccleſia Anglicana, *was at the time of the making this Statute of the Great Charter, the very ſame in Doctrin and Diſcipline, Tenents and Practice, for the Maſs, and other Rites, with that which is now called the Church of* Rome.

By the Statute 27 *Eliz.* ch. 2. it is High-Treaſon for any Prieſt of the Church of *Rome* to come into, or remain in this Realm. The Statute 23 *Eliz.* ch. 1. makes it the forfeiture of 200 Marks, and a years Impriſonment, to ſay Maſs. And by 13 *Eliz.* ch. 2. and other Statutes, it is made High-Treaſon to be reconciled to that Church, which in *Magna Charta* is called *Eccleſia Anglicana*; and to hear Maſs, as was then practiſed, the forfeiture of 100 Marks, by 23 *Eliz.* 1.

By the ſeventh Chapter of *Magna Charta* it is Enacted, *That a Widow, after the Death of her Husband, incontinent, and without any Difficulty, ſhall have her Marriage and her Inheritance,*

ritance, and shall give nothing for her Dower; and the third part of her Husband's Lands shall be assigned for her Dower.

By the Statute 3 *Jac.* 1. ch. 5. A Widow of the *Roman Catholic* Religion shall not enjoy two third parts of her Dower, unless she will change her Religion, and come to Church. *Par.* 10. And if she was married by a Priest of the Church of *Rome*, and not by a Minister, according to the Common-Prayer-book, she shall not have any Dower at all. *Par.* 13.

By the last Chapter of *Magna Charta* it is Enacted, *That all persons, as well Spiritual as Temporal, shall enjoy all their free Liberties and free Customs, which they have had in Time past.*

By the Statute 3 *Jac.* 1. ch. 5. a *Roman Catholic* shall not be admitted to present to his Advowson. *Par.* 18. He shall not be capable of enjoying Lands by Inheritance or Grant. *Par.* 16, 17. Nor to be an Executor, Administrator, or Guardian. *Par.* 22. Nor shall he enjoy any Copy-hold, or Customary Estate for Life, by the Stat. 35 *Eliz.* ch. 2. *Parag.* 5. Besides many other particulars, contrary to the free Customs and Liberties of former times.

Thus much of the Penal Laws made against *Roman Catholics* in the Reigns of Queen *Elizabeth*, King *James*, and King *Charles* I. As for the Statute 35 *Eliz.* ch. 1. I look upon that to be solely intended against another sort of Recusants, *viz. Protestant Sectaries*, and such as frequent Conventicles. There remain two more Statutes made against *Papists*, in the Reign of His late Majesty King *Charles* II. namely the 25 and 30 of his Reign; which being some-

thing

thing different from thoſe I have already mention'd, I will treat of them apart by themſelves.

On the whole, I deſire the diſcreet Reader ſeriouſly to conſider but theſe two things: 1. What rigid Laws have been made for the Extirpation of the *Roman Catholic* Religion and its Profeſſors from the face of the *Engliſh* Earth; That nothing has been omitted to this purpoſe which the Wit of Man could invent, even to the depriving them of all Books of Devotion in that Religion, (*Stat.* 3 *Jac.* 1. *ch.* 5. *Par.* 25.) That theſe Laws have been (at ſome times more eſpecially) ſeverely executed againſt their Lives, Eſtates, and Reputations: Yet all this, for the ſpace of above 120 years, has not been able to extinguiſh that Religion in *England*, but that it has ſubſiſted, nay even increas'd, when under the greateſt Perſecutions and Scandals. He that conſiders this, cannot eaſily forbear concluding, that the hand of God is in it; and that they preach no abſurd or unreaſonable Doctrin, who affirm, that *This is that Church which the Gates of Hell ſhall not prevail againſt*, and which our Bleſſed Savior has promiſed to *be with* (as well by his Aſſiſtance and Support, as Direction) *to the end of the World.*

2. Conſider the Effect and Conſequence of theſe Penal and Sanguinary Laws in matters of Religion. If their Juſtice and Reaſonableneſs ariſes only from their being Enacted by Parliament, then was the Statute of the *Six Articles*, made 31 *H.* 8. and the Statute againſt *Lollards*, made 2 *H.* 5. as Juſt and Reaſonable: Then, if in future times any ſuch-like other Laws ſhould be made by any future Parliament, (for what *has* been *may* be) they will be of as great and unqueſtionable Authority, and the Perſecution Enacted by them as Legal and Juſt:

In

In ſhort then, the Religion ſet up by Parliament, be it what it will, muſt always be beſt and trueſt. But if, on the other hand, the Goodneſs and Reaſonableneſs of the Proteſtant Religion does not conſiſt in the force of an Act of Parliament; nor the Illegality and Badneſs of the Religion of the Church of *Rome* to be concluded from the poſitive Laws made of late years in *England* againſt it: why then ſhould we not deſire and hope, That theſe Sanguinary and Penal Laws may be Repealed, and that Religion may be left to ſtand or fall according to its innate Merit, without the Compulſion of a Legal Force, which may make a *Hypocrite*, but never can a *Pious Chriſtian?*

REASONS humbly offered

Againſt the TEST, Act of 25 *Car.* 2. ch. 2.

Made to diſable all Papiſts *to hold any Office of Truſt or Profit, unleſs they take the Sacrament in a Pariſh-Church, and renounce* Tranſubſtantiation.

1. THE pretended Occaſion of making this Statute is expreſt in the Title and Preamble to be *For preventing Dangers which may happen from* Popiſh Recuſants; or, as the commonly-received meaning is more expreſly worded in the ſubſequent Stat. of 30 *Car.* 2. *For the Safety of His Majeſty's Royal Perſon and Government.* Now ſuppoſing (tho' it is moſt falſe, yet I ſay, ſup-

ſuppoſing) for Argumentation ſake, that the *Papiſts* were dangerous to the Perſon and Government of His late Majeſty, who lived a Proteſtant, and for ſome time ſuffer'd the rigor of the Law to run looſe againſt them; yet who can ſuppoſe 'em to be dangerous to this King's Perſon and Government, He being of their own Religion, and, under God, their chief Friend and Protector, whoſe Life and Proſperity is as near and as dear to them as their own hearts Blood?

2. It hath been the unhappy occaſion of Scandal to Chriſtianity in general, and, 'tis too much to be fear'd, the Damnation of many Souls; For when the World ſees perſons enjoyn'd by a Statute to take the Sacrament under ſevere Penalties, and nothing of *Preparation*, or other previous Circumſtance, required or adviſed by that Statute, but only that they do it in a Pariſh-Church, in preſence of two Witneſſes, and that they produce a Certificate of it under the Miniſter and a Church-wardens hands: what can men preſume, but that this is done to ſerve a Secular turn, and not out of Devotion, people being thereby puſh'd headlong on to *eat and drink their own Damnation, not diſcerning the Lord's Body?* What elſe can be concluded, when, *de facto*, we have ſeen ſome men of Debauch'd Lives and Atheiſtical Principles come to the Communion, only to comply with this Statute, and capacitate themſelves for ſuch or ſuch a beneficial Office, with as little ſenſe of *Religion before*, as ſign of *Reformation after* their Receiving?

3. It is a ſort of Perſecution for Religion. And God knows whether this Statute has not been a Preſi-

Preſident to that Perſecution in *France*. 'Tis true, *That* in *France* is *general*, to *All* that diſſent from the Religion of that Kingdom, whether they be *in* or *out* of Office: *This*, only to thoſe *in* Office. *That* (as reported) uſes many ways of Affliction to the *Hugonots*: *This*, only the depriving the *Papiſts* of their Livelyhood, and reducing them to Beggery, by ſtripping them of Imployment, which in effect concludes all in one. Allowing this difference, the Character which Dr. *Burnet*, in his late Letters, gives of the *French-Proteſtants* Perſecution, may ſerve, in relation to this Statute, for the *Papiſts* in *England*. He tells his Reader, in the fifth Letter, dated from *Nimmeguen*, That the *Proteſtants* in *France are forced to ſign an Abjuration, which all the world muſt needs ſee is done againſt their Conſciences*; and that *they are prevailed on by the many lingring Deaths, of which they ſee no end, to make ſhipwrec of their Faith.*

4. It hath vilified the Character of the Church of *England*, whoſe Biſhops were formerly eſteemed the living Oracles, Repreſentatives, and Heads of that Church; yet ſince this Statute they are all, even the Archbiſhop of *Canterbury* himſelf, tho' the very firſt Eccleſiaſtic of *England*, ſubjected in ſome ſort to a meer Pariſh-Prieſt, and Church-warden, perhaps the pooreſt as well for Parts as Preferment, being obliged by this Act to go to the next Pariſh-Church, and receive of the Parſon or Vicar there, in order to obtain a Certificate of the ſame, ſubſcribed by the ſaid Parſon and one Church-warden, like a Lay-Elder; it not being ſufficient by this Statute for a Biſhop himſelf to receive in his own Cathedral before the Dean and all the Prebends;

nor

no ipso Certificate of such Receiving valid, tho' attested by them all, under the public Seal of their Church, in a full Chapter.

5. It hath been a Disquiet and Stumbling block, not only to those of the Church of *Rome*, but to divers grave Members of the Church of *England* also; which Church hath never flourish'd so much since the making of this Statute, as it did before. I have known several of the Gravest and most Learned of the Protestant Divines, and Beneficed men in the Church of *England*, who never perform'd this *Test*: 1. Because, tho' they constantly and devoutly frequented the Communion at the usual times in their own Churches, yet they thought the Sacrament (which is the most Sacred and Venerable part of the Christian Religion) to be profaned, when made subservient to a worldly Interest. 2. Tho' they did not believe *Transubstantiation*, yet they are taught in the Legal Church of *England* to believe the *Real Presence* in the Sacrament; and as they cannot and will not take upon them to define the *Quomodo*, or *manner how* that *Real Presence* is, so they think it an Imposition on their Judgment to be forced to affirm *how it is not*, *viz.* that it is not by *Transubstantiation*; especially since the greatest Wits, and most able Divines of *Europe*, have for Five hundred years disputed the Question, with (at least) Colour and Probability on both sides. It is one thing *not to believe* a Tenent in Divinity or Philosophy, and another thing *to believe* the contrary. For instance; I do not believe positively that *there is* a World in the Moon: yet I cannot say I believe positively *there is not* a World in the Moon, having read the ingenious Book writ on that subject, and

aſcribed to Biſhop *Wilkins*. It ſeems therefore as unreaſonable, for any man to be compelled to believe, or ſubſcribe to, a Negative in School-Divinity, as it is abſurd and unpracticable for a man to be put to prove a Negative in Law, or Logic.

6. In fine, this Statute ſeems to have been, at the time of its making, intended chiefly againſt the then Duke of *York*; and, as appears by ſubſequent endeavors, was the firſt ſtep towards the *Bill of Excluſion*; for by this Statute he loſt his great Office of Lord High-Admiral, and ſuffer'd many Troubles. Which moſt Illuſtrious Prince being now, by the Glorious Providence of God, become our King, His Majeſty's Loyal Subjects the Lords and Commons in Parliament (with due Submiſſion and Reverence I ſpeak it) ſeem obliged in Honor to Repeal that Law, which in the very making was levell'd againſt their now Sovereign, and deſigned principally to wound His Intereſt.

REASONS humbly offered

Againſt the TEST, Act of 30 *Car.* 2. Stat. 2.

Made to diſable Papiſts, *whether Lords or Commons, to ſit in either Houſe of Parliament, to ſerve the King or Queen, or to come into their Preſence without Licenſe of the Privy-Council, unleſs they firſt renounce* Tranſubſtantiation, *&c.*

1. THat this Statute was made in *November*, 1678. on the ſurprizing frights and belief

of

of those Plots and Treasons which *Oates* then suggested and swore; and was, as I may say, contrived and pass'd in hot blood, to prevent the then suggested Dangers; and, as the Title and Preamble expresses, *for the Safety of His Majesty's Person and Government*. But it having since appear'd, that those frightful Dangers and pretended Plots were without other Circumstances of Truth than the bare Oaths of a perjur'd and infamous Man; who has since been, in due form, and according to the course of the Common-Laws of *England*, convicted of *Wilful Perjury* in that matter, and his Testimony render'd incredible to all future Ages; it having appear'd also by subsequent Revolutions, that the most vehement Assertors and Prosecutors of *Oates*'s pretended Plot, were at that very time (under the Umbrage of *that Plot*) conspiring and managing another *most Hellish and Bloody Conjuration* against His late Majesty and our now Gracious Sovereign, which Conspiracy being afterwards discovered, and the principal Heads of it Attainted and Executed, and the late Duke of *Monmouth*, their great Idol, taken in actual Rebellion, Attainted in Parliament, and Beheaded; the *Papists* all this while not so much as making one false step, but appearing always steady in their Loyalty; and in this last Rebellion, as well as in that against King *Charles* I. fighting for their King and the Established Government: What colour of Reason then can be produced to continue the severity of this Law against those *Roman Catholics*, whom His Sacred Majesty affirms to be his Friends and Loyal Subjects, under the false Notion of *Enemies* and *Traytors*?

2. It seems not only against the Birthright and Privilege of the Peerage of *England*, but against that *Lex & Consuetudo Parliamenti*, which Sir *Edward Coke* in all his Writings makes so Sacred; for every Temporal Lord, being of full age, ought to have a Writ of Summons *ex debito Justitiæ*: And being summon'd and commanded by the King's Writ (as he is) to come and sit in Parliament, and there give his advice; if afterwards he is not suffer'd to sit, unless he will renounce his *Religion*, or at least some of i s *principal Tenents*, the King's Writ of Summons is hereby defeated, the King deprived of the Advice of so many of his Great Counsellors, who are thus not suffer'd to sit, and the House of Peers (which is the most August and Highest Court of Justice in this Kingdom) deprived and mutilated of so many Members. So also for the Commons, the King's Writ for their Election directs it to be made *libere & indifferenter*: But after such Election made and return'd, and the Parti s come up, if they must not be admitted to sit, unless upon the terms abovementioned, which perhaps they cann t in conscience perform, to what purpose is such free and indifferent Election? The House of Commons petition the King for *freedom of speech* in their House, and he grants it, (tho' sometimes they have used that Liberty very undecently against the Giver.) Why then should they themselves be against a *freedom of Speakers* to sit in their Hou e, when duly elected? In the 6 *H.* 4. a Parliament sate at *Coventry*, excluding all Lawyers, for which reason it not only got the opprobrious name of *Parliamentum indoctum*, but, as Sir *Edw. Coke* says, 4 *Inst.* p 48. *it was fruitless, and made never a good Law.* We easily remember the year

co. 4. *Inst.* p. 1.

year 1659. when the unanimous voice of this Nation (then beginning to recover from her former Convulsions) cry'd aloud for a *Free Parliament* without constraint and distinguishing of Parties, and with such a Parliament began our Happiness in the Glorious Restauration of His late Majesty and Royal Brothers.

3. It enjoyns the making and subscribing a Declaration which is tantamount to an Oath; for the words are, *I do solemnly and sincerely, in the presence of God, profess, testifie, and declare*: In this Declaration the party is not only forced to say he believes *there is not any Transubstantiation*, &c. *but that the Invocation or Adoration of the Virgin* Mary, *or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of* Rome, *are Superstitions and Idolatrous*. Which last part is not only point-blank against the Conscience of any *Roman Catholic* to say, but also against the Judgment of several of the most Learned among the *Protestant Divines* of the Church of *England*. It would be tedious to cite all their Names; let it suffice that That great *Protestant Divine*, and Prebend of *Westminster*, Mr. *Thorndyke*, says positively, That *they that separate from the Church of* Rome *as Idolaters, are thereby Schismatics before God. Just Weights and Measures*, pag. 7, 8. where he proves it in a large Discourse. Note also, That in this Declaration there is not one word relating to the Peace of the Government, or the Safety of the King's Person, or to oblige the Subscriber to be a True and Loyal Subject, but only Notional Matters of Divinity, and Tenents of Religion,

4. It deprives the King of the Service of his Subjects, if *Papists*, or such who cannot in their Conscience make the Renunciation in the Act specified, tho' they be never so capable and proper for his Service, tho' they be never so Faithful and true to their Prince, tho' they be the most Learned and Expert, or greatest Artists of their time; nay, tho' they are already sworn his Servants in Ordinary, and have taken the usual Oath of their Office, *to serve him truly and faithfully, and give their due attendance in such or such a place*; yet they must by this Statute (if *Papists* as aboveſaid) either be forsworn, and not serve and attend in their Office, and not dare to come into, or remain in the King's presence, or else incur the grievous Penalties and Forfeitures in this Statute mention'd. For a Sovereign Prince to be thus divested of that Prerogative which God and his Birth-right have given him in the Service of his Subjects, and for those Subjects, being at Liberty, unblemish'd with any Crime, and able and desirous to serve him according to their Duty and Allegiance, to be by a new and Arbitrary Law forbid, and render'd uncapable of performing such Service, is highly against Reason.

5. It seems in one respect to allow more Power to Six Privy-Counsellors, than to the King himself; for it allows to any person disabled by this Act, to come into the King or Queens presence, if licensed so to do by Warrant under the Hands and Seals of Six Privy-Counsellors, by Order of His Majesty's Privy-Council. Yet do not the words of this Act allow to the King himself such power of Licensing, tho' it be by Warrant under his own Royal Hand and Signet. This may sute with the Character

of a Duke of *Venice*, but whether it agrees as well with the Majesty of a Sovereign Prince and Hereditary Monarch, I think is no hard matter to answer.

6. Lastly, it cannot but be observed, That this Statute was the second and penultimate step to the *Bill of Exclusion*. Who cannot remember, that from the date of this Act the disaffected Party to His now Majesty, when Duke of *York*, cast off their Vizard, and did openly and with a bare face endeavor all his Troubles, by Voting and Addressing against him, and not ceasing till they had seen him in a second Exile; nor then neither, but some of his base and inhuman Enemies continuing to express their malice to his very Picture; which is something more than even the Rebels under *Cromwell* did in the time of his First. The memory of these Actions is scandalous to our Nation, the very thought of them is uneasie to a Loyal *English* Heart. If this Statute therefore was the Fore-runner (not to say the Foundation) of all these Disgraces, have we not reason to hope the Loyal Parliament (when His Majesty shall please to Assemble that most High and Honorable Court) will reform the blemishes of their Predecessors, by repealing this Law, which has not only appear'd so incommodious to His Majesty already, but still is so to his Service, and to the Ease of His Loyal Subjects?

CONCLUSION.

After all, it may possibly be objected, That the Penal Laws having been Enacted by the Royal Signature in Parliament, ought not to be thought unreasonable, or not fit to be continued, altho' in some things contradictory to *Magna Charta*, because established

shed by the Supremest Authority in this Nation, th
same Fountain from which *Magna Charta* it self in
flowed. To such an Objection I Answer, That this i
the very case of the *Star-Chamber*; That Court wa
establish'd by several * Acts of Parliament, and it
Authority and Power corroborated and affirmed b
divers subsequent Laws: Yet afterwards by Act o
Parliament in the 16th year of King *Charles* I. ch. 10
All those Statute-Laws (so far as they concerned
the said Court) were Repealed; and that Cour
(tho' of long continuance in this Nation) abolish'd
and utterly suppress'd. The Reasons for so doing
as alledg'd in the said Statute, are very observable
First it is set forth in the Preamble, That it was re
pugnant to the *Great Charter*; and afterwards fol
low these very words: *And forasmuch as the Reason
and Motives inducing the Erection and Continuance o
that Court do now cease, and the Proceeding, Cen
sures, and Decrees of that Court have by experience been
found to be an intollerable burden to the Subject.*——
Can any thing more exactly parallel the present case
of the *Test* and *Penal Laws*, whether it be in relati
on to their opposition to the *Great Charter*, th
ceasing of the Motives that first occasion'd them, or
their intollerable burden to the Subject?

* 3 *H.* 7. *c.* 1. 21 *H.* 8. *c.* 20.